



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Houston Helicopters, Inc.--Request for
Declaration of Entitlement to Costs

File: B-231122.3

Date: July 6, 1993

James M. Culliton, Esq., for the protester.
Allen W. Smith, Department of Agriculture, for the agency.
Daniel I. Gordon, Esq., and Paul I. Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protester is not entitled to disputed portion of claimed costs of filing and pursuing a protest where the agency has provided a detailed, reasonable explanation for its rejection on the basis that the costs in question were unrelated to the protest before the General Accounting Office, and the protester failed to respond substantively to the agency's position.

DECISION

Houston Helicopters, Inc. requests that our Office determine the amount it is entitled to recover from the Department of Agriculture for the costs of filing and pursuing its protest in Houston Helicopters, Inc., B-231122, Aug. 15, 1988, 88-2 CPD ¶ 149. We determine that Houston is entitled to recover \$719.70 out of its total claim of \$8,211.00

We sustained Houston's original protest against the agency's rejection of its bid under invitation for bids (IFB) No. 49-88-02 for helicopter services, issued by the Forest Service, because the agency improperly treated the protester's failure to include the make, model, and series data about the products being offered as a matter of responsiveness. We held that, in the context of the IFB at issue, the missing information related solely to responsibility and therefore could be supplied at any time prior to award. In addition to recommending that the contract awarded to another bidder be terminated and that award be made to Houston, if otherwise appropriate, we found Houston entitled to recover the reasonable costs of filing and pursuing its protest, including attorneys' fees.

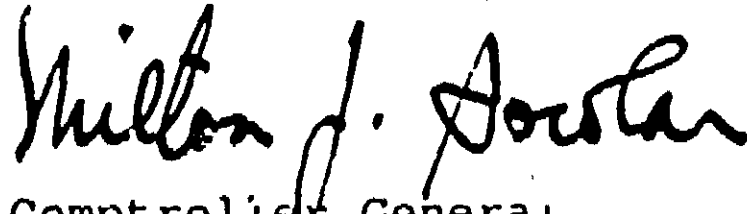
Pursuant to our decision, Houston submitted a claim for fees and costs amounting to \$8,211.00 to the agency. After the agency requested an itemized billing, the protester submitted a statement detailing the work for which the costs and fees were incurred. Upon review of that detailed statement, the agency denied all but \$719.70 of that claim on the basis that the balance of the claim did not appear to represent costs incurred in filing and pursuing the protest. Specifically, the agency notified Houston that it viewed much of the claim as representing costs incurred in Houston's effort to investigate what that company saw as possible fraud by the contracting officer in connection with other contractual matters, raising charges relating to solicitations other than the IFB at issue in this protest, and pursuing separate protests in another forum. In addition, because most of the claimed amount was incurred after the protest was filed and, indeed, after our Office issued its decision, the agency viewed as dubious any nexus with filing and pursuing the protest. The agency also detailed the specific items in the claim which it found were justified as protest costs. The protester has not responded substantively to any of the agency's contentions.

A protester seeking to recover its protest costs must submit sufficient evidence to support its monetary claim. Armour of Am., Inc.--Claim for Costs, B-237690.2, Mar. 4, 1992, 71 Comp. Gen. ___, 92-1 CPD ¶ 257. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable. Id.

In its filings with our Office, the protester merely repeats its request that it receive the entire amount claimed. The agency has explained its specific basis for disallowing particular portions of the claim and offered reasonable grounds supporting its position, and the protester has failed to respond to the agency's position. Where an agency contends that part of a claim represents work other than the costs of filing and pursuing the protest, a protester has an obligation to explain why the costs were, in fact, incurred in filing and pursuing the protest. See Techniarts Eng'g--Claim for Costs, 69 Comp. Gen. 697 (1990), 90-2 CPD ¶ 152. While Houston makes a conclusory assertion that the agency's position is "oppressive, unconscionable, and unrealistic," it has provided no explanation that could support a conclusion that all or part of the disputed costs and fees were actually incurred in filing and pursuing the protest.

By failing to reply substantively to the agency's contentions, Houston has effectively precluded our Office from discerning which, if any, of the costs and fees above

\$719.70 arose as part of the cost of pursuing the protest.
See id. Accordingly, we find that Houston is entitled to
the \$719.70 allowed by the agency.

for 
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